IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.22194 OF 2004

AND

WRIT PETITION NO.22833 OF 2004

IN WRIT PETITION NO.22194 OF 2004

Between:

Sambari Prabhakar S/o.Chinnaiah
Metpally Village&Mandal, Karimnagar Dist

..... PETITIONER

AND

1 The Govt of A.P., rep by Its Chief Secretary,
Secreariat Buildings, Hyderabad.
2 The Govt of A.P., rep by its Prl., Secretary to the Panchayath Raj Dept,
Secreariat Buildings, Hyderabad.
3 Tthe Govt of A.P., rep by its Prl. Secretary to the Municipal Admn.,
Secreariat Buildings, Hyderabad.
4 The Commissioner, Panchayathraj, Hyderabad
5 Upgraded Metpally Municipality rep by Spl Officer -Revenue Divisional Officer, Jagtial, Karimnagar Dist.
6 The Collector , Karimnagar Dist.

7. J.Lingam, S/o.Bhoomaiah, 40 years, Occ.Agriculture & Upa-Sarpanch,

Metpali Gram Panchayat Municipality, Metpalli, Karimnagar District. (R-7 impleaded as per Orders in W.P.M.P.No29442 of 2004, dated 07-03-2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of writ of Mandamus or any other writ declaring the G.OMs.No.359 dt 26-11-2004 and the consequential G.O.Ms. No.s498 and 499 dt 26-11-2004 issued by the respondents No.2 and 3 as arbitrary, illegal, political motivated and against the mandatory provisions of the A.P. Panchayath Raj Act and the Rules Rule 12 of the AP. Gram Panchayath (Declaration of Villages)Rules,1994 .

Counsel for the Petitioner : MR. K.VENUMADHAV

Counsel for the Respondents : GP FOR PANCHAYAT RAJ & RURAL DEV.

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IN WRIT PETITION NO : 22833 of 2004

Between:

1 ANNAM NAGARAJ S/O.VIttal
R/o. Metpally Village and Mandal, karimnagar District.
2 Sri Poodari Shyam Susndar Goud S/o.Raja Ram
R/o. Metpally Village and Mandal, karimnagar District.
3 Sri P.Srinivas S/o.Narayana
R/o. Metpally Village and Mandal, karimnagar District.
4 Mohd.Shakeer Hussain, Siddiq S/O Kasheem, occupation 9th ward member.
5 Giridu Lakshmi W/o.Nadpi Gangaram
R/o. Metpally Village and Mandal, karimnagar District.
6 Ch.Lakshmi W/o.Venkaiah
R/o. Metpally Village and Mandal, karimnagar District.
7 Smt Govardhana Hema Latha W/o.Nagender
R/o. Metpally Village and Mandal, karimnagar District.
8 Marri Pochaiah S/o.Pochaiah
R/o. Metpally Village and Mandal, karimnagar District.
9 Thirusulla Arjun S/o.Bheemaiah
R/o. Metpally Village and Mandal, karimnagar District.
10 Smt. Koheda Bhoolaxmi W/o.Mysaiah
R/o. Metpally Village and Mandal, karimnagar District.
11 Egolapu Laxmi W/o.Narsaiah
R/o. Metpally Village and Mandal, karimnagar District.
12 Pippera Rajeshwar S/o.Rajaiah
R/o. Metpally Village and Mandal, karimnagar District.
13 Chi Hanmakka W/o.Bhoomaiah
R/o. Metpally Village and Mandal, karimnagar District.
14 Ande Gangadher S/o.Venkatrajam
R/o. Metpally Village and Mandal, karimnagar District.
15 Sri Borrolla Gangaram S/o.Rajaiah
R/o. Metpally Village and Mandal, karimnagar District.
16 Sri M.Gangadhar S/o.Sambhaiah

R/o. Metpally Village and Mandal, karimnagar District.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh represented by its Chief Secretary Secretariat Buildings, Hyderabad.
2 The Government of Andhra Pradesh, represented by its Principal Secretary to the Panchayat Raj Department, Secretariat Buildings, Hyderabad.
3 The Government of Andhra Pradesh, represented by its Principal Secretary to the Muncipal Administration Department, Secretariat Buildings, Hyderabad.
4 The Commissioner, Panchayat Raj Department, Hyderabad.
5 Upgraded Metpally Municipality represented by Special Officer Cum Revenue Divisional Officer, Jagtial Karimnagar District.
6 The Collector, Karimnagar District at Karimnagar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly, one in the nature of writ of Mandamus declaring G.O.Ms.No.359, dated 26.11.2004 issued by 2nd Respondent, and consequential G.O.Ms.No.498, dated 26.11.2004 and G.O.Ms.No.499, dated: 26-11-2004 issued by 3rd Respondent as illegal arbitrary, null, void and in violation of provisions of Andhra Pradesh Panchayat Raj Act, Andhra Pradesh Gram Panchayat (Declaration: and Village) Rules: 1994 Andhra Pradesh Municipalities Act and other Provisions of the Andhra Pradesh Transitional area and smaller Urban area (Fixation of Criteria) Rules: 1995 and consequently set aside the same and to pass such other order or orders.

Counsel for the Petitioner : MR. K.V.RAJENDRA PRASAD

Counsel for the Respondents 2 and 4 : GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3 : G.P. for Municipal Administration

Counsel for the Respondent No.5 : R.Timma Reddy

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.22194 OF 2004

AND

WRIT PETITION NO.22833 OF 2004

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COMMON ORDER :

Both these writ petitions which involve common questions of fact and law are heard together and decided by this common order.

The petitioner in W.P.No.22194 of 2004 is the Sarpanch of the Gram Panchayat of Metpally, whereas the petitioners in W.P.No.22833 of 2004 are the Members of the said Gram Panchayat having been elected as such from different wards of the Gram Panchayat. In both the writ petitions, the petitioners are seeking a declaration that G.O.Ms.No.359, Panchayat Raj & Rural Development (PTS.IV) Department, dated 26-11-2004 whereunder the notification in which the area of Metpally was declared as village and as Gram Panchayat was cancelled with immediate effect so as to declare the said area as third grade Municipality as well as the consequential notifications in G.O.Ms.Nos.498 & 499, dated 26-11-2004, thereby constituting Metpally Municipality as arbitrary, illegal and in violation of the provisions of A.P. Panchayat Raj Act, 1994 and A.P. Gram Panchayat (Declaration of Villages) Rules, 1994.

The area of Metpally of Karimnagar district was originally declared as Village and Gram Panchayat. In the meeting held on 20-09-2004, the Metpally Gram Panchayat unanimously passed a resolution approving for the upgradation of Metpally Gram Panchayat into Municipality. In pursuance thereof, the District Collector, Karimnagar by letter dated 2-11-2004 requested the Government of A.P. to take necessary action to upgrade the Gram Panchayat into Municipality. Accordingly, the Government after examination of the matter, in exercise of the powers conferred under clause (f) of Sub-section (2) of Section 3 of The A.P. Panchayat Raj Act, 1994 (Act No.13 of 1994) read with clause (i) of Sub-Rule (1) of Rule 12 of the Andhra Pradesh Gram Panchayat (Declaration of Villages) Rules, 1994, issued G.O.Ms.No.359, Panchayat Raj & Rural Development (PTS.IV) Department, dated 26-11-2004, thereby

cancelling the notification in which the area of Metpally was declared as Village and Gram Panchayat with immediate effect so as to declare the said area as third grade Municipality. On the same day, the consequential orders were also issued under G.O.Ms.No.498, Municipal Administration and Urban Development (Elec.II) Department, dated 26-11-2004 in exercise of the powers conferred by clause (42-a) of Section 2 of A.P. Municipalities Act, 1965 read with Rule 3 of A.P. Transitional Area and Smaller Urban Area (Fixation of Criteria) Rules, 1995 thereby declaring the areas covered under the erstwhile Metpally Gram Panchayat as Smaller Urban Area with immediate effect. Under G.O.Ms.No.498, dated 26-11-2004, a separate notification has also been issued in exercise of the powers conferred by clause(22) of Section 2 of The Andhra Pradesh Municipalities Act, 1965 (Andhra Pradesh Act 6 of 1965) read with Rule 3 of the Andhra Pradesh Municipalities (Gradation of Municipal Councils and Nagara Panchayats) Rules, 1995, thereby declaring the newly constituted Metpally Municipality as third grade Municipality with immediate effect. A further notification – G.O.Ms.No.499, Municipal Administration & Urban Development (Elec.II) Department, dated 26-11-2004 was also issued in exercise of the powers conferred under sub-Section (1) of Section 7 of the A.P. Municipalities Act, 1965 (Andhra Pradesh Act 6 of 1965), appointing the Revenue Divisional Officer, Jagityal as a Special Officer for the newly constituted Metpally Municipality to exercise the powers, perform duties and discharge the functions of the Municipality, the Standing Committee and Ward Committees.

The said orders are under challenge in these two writ petitions contending inter alia that the impugned orders issued by the Government are without jurisdiction since under Section 3(2) of the A.P. Panchayat Raj Act, 1994, the Commissioner alone is competent to upgrade a Gram Panchayat and to declare the same as a Municipality. It is also contended that before passing any order converting the Gram Panchayat as a Municipality, it is necessary to consider the viability and to record the reasons thereof as required under Rules 9 & 12 of the A.P. Gram Panchayat (Declaration of Villages) Rules, 1994. That apart, it is also necessary to issue a show-cause notice to the Gram Panchayat and the objections if any submitted by the Gram Panchayat shall be taken into consideration before taking any final decision. Since no such procedure was followed, the impugned G.O.Ms.No.359 dated 26-11-2004 as well as the consequential orders in G.O.Ms.No.498 and G.O.Ms.No.499 dated 26-11-2004 are unsustainable and liable to be set aside.

In W.P.No.22833 of 2004, it is also urged that the constitution of a Municipality should be preceded by a notification under clause (42-a) of Section 2 of the A.P. Municipalities Act, 1965 specifying the area as a transitional area on the satisfaction of the Governor with regard to the population of the area, revenue generation for local administration and etc. Since there was no such notification specifying the transitional area, the impugned notifications issued straightaway creating the Municipality are illegal and unsustainable.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is to be noted that Section 3 of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act') which provides for declaration of a village for the purpose of the said Act has been amended by A.P. Panchayat Raj (Amendment) Act, 2002 (Act 22 of 2002) with effect from 20-06-2002 substituting the word 'Government' in the place of 'Commissioner' wherever occurred in Section 3 of the Act, thereby vesting the power in the Government to exercise the powers under Section 3 of the Act. Hence, the contention of the petitioners that the impugned G.O.Ms.No.359, dated 26-11-2004 is without jurisdiction cannot be accepted.

So far as the contention that the said notification is not in conformity with the procedure prescribed under Rule 12 of The A.P. Gram Panchayat (Declaration of Villages) Rules, 1994 is concerned, it is relevant to note that in the case on hand admittedly the Gram Panchayat, Metpally itself passed an unanimous resolution on 20-09-2004 for upgrading the said Gram Panchayat into a Municipality. As a matter of fact, on the basis of the said resolution, the District Collector by letter dated 2-11-2004 requested the Government to take necessary action to upgrade the Gram Panchayat into Municipality and accordingly the impugned notifications have been issued. It is true that Rule 12 of the above Rules made under G.O.Ms.No.515, dated 17-09-1994 in exercise of the powers conferred by sub-Sections (1) & (2) of Section

3 read with Section 268 of the Act requires that before issuing a notification under clause (f) of sub-Section (2) of Section 3 of the Act, the Gram Panchayat which will be affected by issue of such notification shall be given an opportunity of showing cause against the proposal to indicate its decision. However, in the light of the unanimous resolution passed by the Gram Panchayat for the upgradation of the Gram Panchayat into Municipality, much prior to the impugned notifications, issuance of notice under Rule 12 cannot be held to be mandatory and failure to issue such notice does not vitiate the impugned action. As a matter of fact, under G.O.Ms.No.515, dated 17-09-1994 the Government is vested with the power for relaxation of the rules contained in the said order. Viewed from any angle, I am unable to hold that impugned G.O.Ms.No.359, dated 26-11-2004 is in violation of the principles of natural justice or contrary to the provisions of Rule 12 of the Rules.

The further contention raised in W.P.No.22833 of 2004 that the impugned notifications are bad in law since the area in question was not notified as transitional area under clause (42-a) of Section 2 of the A.P. Municipalities Act, 1965 is also without any substance since in G.O.Ms.498, dated 26-11-2004 itself it was notified that the areas covered under the erstwhile Metpally Gram Panchayat was declared as Smaller Urban Area with immediate effect. Once, such a notification is issued, the Metpally Municipality is deemed to have been constituted under sub-Section (1) of Section 3 of the A.P. Municipalities Act, 1965. Thus, on the face of it, the contention of the petitioner that G.O.Ms.No.498, dated 26-11-2004 was issued straight away creating the Municipality is factually incorrect.

It is to be noted that in exercise of powers conferred by Section 326 read with clause (42-a) of Section 2 of the A.P. Municipalities Act, 1965, rules were made in G.O.Ms.No.39, M.A. & U.D. (Elec.II) Department, dated 3-2-2005 for fixing the criteria for notification of transitional area and smaller urban areas. As per Rule 3 of the said rules for notifying a Smaller Urban Area, the following criteria is required to be satisfied.

(a) Population	Above 40,000 (Provided that a local area with a lesser population may also be considered if it has acquired urban characteristics.

(b) Density of population per Sq.Km.	1000 and aboveProvided that a local area with a lesser density of population may also be considered if it has acquired urban characteristics.
(c) Revenue	Rs.60,000 lakhs and more per annumProvided that local area with a lesser income may also be considered if it has considered if it has acquired urban characteristics.
(d) Percentage of employment in Non-agricultural activities.	60% and above
(e)Economic importance	Availability of market facilities Potentialities to attract industries
(f) Other factors	Local area acquiring Urban Characteristics.

In the counter-affidavit filed on behalf of the respondents in both the cases, it has been categorically stated that the above criteria has been satisfied by the Metpally Gram Panchayat. The details as furnished in the counter-affidavit are as under :

(A) Population as per 2001 Census	42373
(B)Density of population per Sq.Km.	869
(C) Revenue (Last 3 years) 2001-02 2002-03 2003-04	Receipts Payments 59,99,908/- 50,52,801/-63,83,791/- 68,58,340/-1,08,88,027/- 1,04,92,990/-
(D) Population living on Non-Agricultural activities. Percentage of employment in Non-Agricultural activities.	3349779%
(E) Economic importance	Nearby 65% of total population are engaged in Beedi Rolling activity (Manufacture)
Other factors	1. Erstwhile taluq headquarters 2. Headquarters for Metpally Legislative Assembly Constituency. 3. NH-16 is passing through the town. 4. Town is rapidly expanding.

In the counter-affidavits, the allegation of the petitioners that the impugned G.Os. were issued since majority of members have alliance with Telugu Desam Party and Bharatiya Janatha Party has been categorically denied and it is stated that the

population of Metpally village as per 2001 census is 42,376 with a density of population of 869 per sq.km. The revenue receipts as of 2001-02 were 59,88,908. It had increased to 1,08,88,027 in the year 2003-04. The population living on non-agricultural activities is 79%. Beedi rolling activity is a major industry in this area with good market facilities. Metpally is abutting the National Highway and is rapidly expanding. In fact, a proposal has been received vide Lr.Roc.No.24738/2000/Elec.I, dated 6-6-2001 from the Commissioner and Director of Municipal Administration with a request to constitute Metpally Gram Panchayat in Karimnagar District as Transitional Area i.e, Nagar Panchayat under Section 2-A of The Andhra Pradesh Municipalities Act, 1965. While the matter was under the examination of the Government, in M.A. & U.D. Department, the State Election Commission during October, 2001 had taken a decision to conduct election to Metpally Gram Panchayat in Karimnagar District along with the other Gram Panchayats and the elections were held accordingly. In the above circumstances and keeping in view of the unanimous resolution of the Gram Panchayats dated 20-09-2004, the Government passed the impugned G.Os.

In the light of the above said unrebutted averments in the counter-affidavits and in the light of the statutory provisions under which the 1st respondent is vested with the power to issue the impugned notifications, I do not find any substance in any one of the contentions raised by the petitioners.

The Writ Petitions are devoid of any merit and accordingly the same are dismissed. However, there shall be no order as to costs.

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07th March, 2005.

Note:-

1.Furnish CC in 3 days.

(B/O)

gbs

2. Office is directed to put up

a copy of this common order in

W.P.No.22833 of 2004 after signature

of the Hon'ble Judge.

(B/O)

gbs

To

1 The Chief Secretary, Govt of A.P., Secretariat Buildings, Hyderabad.
2 The Principal Secretary to the Panchayath Raj Dept,
Govt of A.P., Secretariat Buildings, Hyderabad.
3 The Prl. Secretary to the Municipal Admn.,
Govt of A.P., Secretariat Buildings, Hyderabad.
4 The Commissioner, Panchayathraj, Hyderabad
5 The Special Officer, Upgraded Metpally Municipality rep by Spl Officer -Revenue Divisional Officer, Jagtial, Karimnagar Dist.
6 The Collector , Karimnagar Dist.

7. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court of AP Bldgs, Hyderabad (OUT).

9. Two C.Cs to the G.P. for Municipal Administration, High Court of AP Bldgs, Hyderabad (OUT).

8.Two CD copies.